(Testimony of Dallas A. Johnson.)

A. I would say perhaps 18 or 20.

Q. How many did you call upon before the 1st of May, 1944?

A. Not more than two or three.

Q. How many did you call upon after the 13th of May, 1944?

A. About four or five, I believe. [2786]

Q. Colonel Hand was assigned to work with you in connection with examining eggs on the waterfront up to the 23rd of June, 1944, wasn't he?

A. No.

Q. He was not?

A. No, he was not assigned to me.

Q. Well, was he assigned to the Department of Justice.

A. No. I don't recall the nature of his assignment. What I am getting at, he worked with us but I don't recall the technical nature.

Q. When did you stop examining merchandise from the firm of Nye & Nissen on the waterfront, when did you personally stop in May, 1944?

A. In May of 1944, when did I stop?

Mr. Faulkner: Withdraw that.

Q. Did you stop examining merchandise that came from the firm of Nye & Nissen in the month of May, 1944? A. No.

Q. In the month of June?

A. I would not state definitely that it was the month of June, no.

Q. Have you any record of any kind, character or description concerning your findings in respect

(Testimony of Dallas A. Johnson.)

to a single shipment to a ship on the waterfront subsequent to May 8, 1944, the day Mr. Nystrom left the firm of Nye & Nissen?

A. I don't recall whether I do or not. I am trying to recall whether or not I went on the James Oliver, which was the 23rd of May, but I don't recall right now whether or not I did.

Q. Now, in relation to the various vessels that you have testified to this afternoon, can you testify to what happened [2787] on those vessels without your notes?

A. Well, I can testify to a certain extent. However, I cannot testify as to any of the weights or any of the numbers of products contained in the shipments. I have certain other recollections regarding these ships, however.

Q. You have a recollection, Mr. Johnson, of some of these instances so clear that you can remember without a piece of paper that you opened up some cases. Now, I would ask you to reach into the recesses of your mind and tell me the names of some of the ships that you examined before you went on the Gilbert Hitchcock?

A. Well, now, some of these ships I went on were not in connection with deliveries made at a particular time. I went on the Cape Charles and I went on a ship called the Tabinta. I was on a ship by the name of the George Julian. That is all I can recall now.

Q. Now, the Gilbert Hitchcock, did you examine butter, eggs, and cheese? Do you remember that?

(Testimony of Dallas A. Johnson.)

A. I recall examining merchandise on the ship. My notes will reflect what I examined.

Q. I mean without your notes, do you remember whether you examined butter, eggs and cheese on that vessel?

A. It is my opinion that I did. However, I would not state definitely unless I could examine my notes.

Q. You have examined a number of exhibits here that purport to be labels that you have your initials on. Some of them [2788] bear a Department of Agriculture stamp and some do not.

A. That is true.

Q. Some of them bear a letter "P"; do you remember that? A. Yes.

Q. Did any of the cases of eggs that bore a Department of Agriculture stamp bear a letter "P"?

A. No, not to my remembrance, they don't.

Q. Did you examine them for that purpose?

A. Did I examine them for that purpose?

Q. Yes, for the purpose of ascertaining whether those cases which had a Department of Agriculture stamp likewise had a letter "P" on them.

A. Yes, I examined for that purpose.

Q. Here are your notes. Will you show me a notation that you made as part of that examination on those ships in which you noted that no case having a Department of Agriculture stamp had a letter "P" on it? A. Well, I——

Q. Did you find it in the Gilbert Hitchcock?

A. I did not make any notation as to any case

(Testimony of Dallas A. Johnson.)

bearing the letter "P" and I did not testify that any case bore the letter "P" on the Gilbert Hitchcock.

Q. Do you know any instance where you wrote down as part of your examination on the ship anything in relation to the notes that no case marked with a Department of Agriculture stamp also bore a letter "P"?

A. The only ship that I testified to where the label bore a letter "P" was the Cape Breton, and I distinctly recall that no case on that particular ship which had a letter "P" also bore a Department of Agriculture stamp.

Q. Did all of these ships which had cases of eggs that bore a Department of Agriculture stamp except possibly one——

A. Yes, with the exception of the Czechoslovakia Victory, I believe.

Q. Did all those cases, all of those cases you examined in respect to your examination you made a note in your record that they did or did not bear a Department of Agriculture stamp; is that right?

A. Yes, I made a note.

Q. Did you in connection with any examination of those cases indicate as part of that examination whether they did or did not bear a letter "P"?

A. If they did not bear a letter "P" I did not make a note of it, because there was no special significance if they did not bear a letter "P".

Q. Did you make any note on the subject of the letter "P" whatever in relation to the examination

(Testimony of Dallas A. Johnson.)

of cases that bore a Department of Agriculture stamp? A. Will you repeat that question?

Mr. Faulkner: Mr. Gagan, will you please read it.

(The record was read by the reporter.)

The Witness: No. As I said before, the Cape Breton was the only ship that had any letter "P" on the label that I noticed. I don't recall having made any notation to the effect that the letter "P" was on those labels. However, I [2790] saved the label, and the letter "P", that was the label I saved, so I distinctly recall that.

Q. The Gilbert Hitchcock, you were on board that vessel with what person?

A. The Gilbert Hitchcock?

Q. Yes.

A. I was on it with Major Evans.

Q. The two of you alone?

A. Yes, I recall being on that vessel.

Q. Did you request Major Evans to go and make an examination of eggs aboard that vessel?

A. Major Evans accompanied me. I did not request him to make the examination of the eggs.

Q. Was he there for the purpose of determining the quality of eggs?

A. Yes, I presume that was his purpose.

Q. Was he there for the purpose of determining the quality of cheese and butter? "Yes" or "No", please?

A. I am trying to recall. I don't think he examined the cheese and butter as to quality.

(Testimony of Dallas A. Johnson.)

Q. On each of these instances where you were aboard a vessel you were aboard the vessel with either Colonel Hand, who has been here in court throughout the trial, or Major Evans; isn't that correct?

A. The vessels that I testified to, yes.

Q. You were there in each case in connection with an investigation, perhaps a criminal investigation, to determine the quality of merchandise being delivered to the various vessels, weren't you?

A. I was there to ascertain the quality and quantity of merchandise. [2791]

Q. But the only merchandise the quality of which you made any effort to determine was eggs; is that right; is that right, in the entire transactions?

A. Well, we had no reason to feel that the quality of the cheese was inferior, so we did not test the quality of cheese. Major Evans on one or two cases tasted the butter to observe the butter and he found that apparently the butter was all right, so we did not inquire into the quality of the butter.

Q. Were you inquiring into the weight of the butter?

A. I was conducting my investigation as to the weight of the cheese and at that time we didn't know that the butter might be short in weight.

Q. Isn't it a fact, Mr. Johnson, without any equivocation whatever that each time you went aboard one of those vessels you knew exactly what

(Testimony of Dallas A. Johnson.)

to look for because you had already talked to Mr. Nystrom? A. No, that is not true.

Q. Is it your testimony here in this court that at the time you were at the waterfront you had never had any word as an agent of the Department of Justice, you never had before you the statement of a man named Pineda? A. I did not.

Q. Did you ever hear of a man named Henry Pineda? A. Yes.

Q. Had you ever heard of him on April 25, 1944?

A. No, I don't believe I had ever heard of him at that time.

Q. Didn't you have a record of one or two or three visits made by your department to Mr. Pineda prior to April of 1944? [2792]

A. No, we did not interview Mr. Pineda until about July or August of 1944. We did not discover that he existed prior to that time. To the best of my knowledge we dug him up from interviews with former employees.

The Court: It is now time for adjournment. The jurors may be excused until eleven o'clock tomorrow morning.

(Thereupon an adjournment was taken until tomorrow, Thursday, March 14, 1946, at 10:00 o'clock a.m.) [2792-a]

Thursday, March 14, 1946, 10:00 o'clock a.m.

The Clerk: United States vs. Nye & Nissen.

The Court: Do you waive the roll call, stipulating and agreeing all of the jurors are present and seated in the box. You may proceed.

DALLAS A. JOHNSON,

recalled.

Cross Examination (Resumed)

Mr. Faulkner: Q. Mr. Johnson, in respect to the ship, the Gilbert Hitchcock, I understand that, and in respect to some of these other vessels, when Major Evans was there you assisted him from time to time in weighing cases of eggs; is that correct?

A. Yes.

Q. And in that weighing process you would weigh and he would record or he would weigh and you would record the weights; is that correct?

A. Well, it is not—you can't state it as clearly as that. When he would be grading the eggs, for instance, and I would be—he would take out—say he would take out the layer that he was inspecting and when he got through the layer he put them on the scale and then he would put that case to the side and I would finish taking the eggs out of that half of the case and put the rest of the eggs on the scale, and when the five layers were on the scale he would look at the scale and he would make a note on his [2793] memorandum, and if I looked at the scale I would make a note on my book.

Q. So that in that process, or in that undertak-

(Testimony of Dallas A. Johnson.)

ing you were checking his weights and he was checking yours; is that right?

A. No, I didn't always see what he put down on his sheet.

Q. Well, at all events, two people participated in the weighing of those eggs?

A. Yes, that is true.

Q. Mr. Evans, or Colonel Hand, were with you on each of the ships that you went on board; is that right? A. Yes.

Q. You were there for the purpose of weighing and checking, whatever your desire called for, the quality and weight of other merchandise in addition to eggs; isn't that true?

A. Yes, I did that by myself. Major Evans didn't help me do that.

Q. Why did you weigh butter by yourself?

A. Well, while he was doing something else at that time; I don't recall exactly.

Q. Why did you weigh cheese by yourself?

A. Well, no particular reason, except that on one or two occasions I got there before he did and while waiting for him to come I would weigh the butter and cheese.

Q. In any of these instances, Mr. Johnson, you knew, as a Department of Justice Agent, that the best evidence of the weight of cheese or of butter, as the case may be, would be the case of the cheese?

A. I wouldn't say that, because [2794] cheese may shrink, also butter; it will dry up.

Q. It shrinks within limits?

(Testimony of Dallas A. Johnson.)

A. Also the eggs will dry up over a period of two years, say.

Q. Why didn't you take a picture of some of these cases of cheese that you said were under weight?

A. We didn't consider that that would be necessary.

Q. In other words, you felt, in investigating a case that might be a criminal case, that you had done all that would be required by merely taking a case of cheese and personally and by yourself weighing it and then come into court and give your recollection of the weight?

A. Well, there are certain ways to record your findings. You can take a picture of what you saw, you can make notes as to what you saw, you can make tracings of anything you saw. I mean there is no set stipulated method that we should follow in recording what we find. As a matter of fact, in some instances it is not necessary to record anything, because the matter is so clear in your mind that you can recall it.

Q. Was there a single instance when you were weighing cheese aboard any of those vessels where you had the weights that you made checked by any other investigator or officer of the Veterinary Corps?

A. Yes. I think on one or two occasions there were other agents with me at the time I weighed merchandise, and I made the notes, but I don't know whether they verified them, or not, but the

(Testimony of Dallas A. Johnson.)

notes were made in their [2795] presence and they were cognizant of the fact I was recording the weights, and also I think Major Evans, on possibly two or three occasions, was present at the time I was writing figures down and weighing the merchandise.

Q. What agent was present with you when you were recording any weights of cheese on the Gilbert Hitchcock?

A. There was no other agent present with me at that time. Major Evans was present.

Q. What?

A. Major Evans was there. If I recall correctly, he arrived there at the time I was weighing the merchandise.

Q. I just asked you to name the other agent.

A. And then I think—well, all right.

Q. What agent was present who checked any weights that you made in respect to the Cape Charles?

A. Mr. Magee was there.

Q. Did he check the weights that you recorded?

A. I can't say what Mr. Magee did. He was there, and if he observed me writing the figures down I would assume that he checked the weights.

Q. Do you recall as a witness in this case that he participated with you in determining the accurate weights of merchandise that you found aboard the Cape Charles?

A. He was there with me, yes.

Q. What?

(Testimony of Dallas A. Johnson.)

A. Yes, he was there with me.

Q. I did not ask you that. Was he there and did he check your weights that you recorded in your book?

A. I don't know [2796] whether he checked my weights, or not.

Q. Did you see him weigh the same merchandise?

A. No, he didn't weigh the same merchandise.

Q. On board the Henry White, did Mr. Magee check any of the weights that you recorded of any of the merchandise on that vessel?

A. I believe he did on that one, yes, he checked those weights and he assisted me in weighing, and along with Colonel Hand, I think, also; I think there were three of us there when we weighed the boxes at that time.

Q. What did he help you weigh, butter, eggs, or cheese?

A. I think on the Henry White that I testified as to the weight of eggs.

Q. Did you testify concerning the weight of cheese?

A. If I might see my notes, I could tell you.

Q. Do you know without your notes whether Mr. Magee assisted you in weighing cheese or butter on that vessel? A. No, not without my notes.

Q. Would your notes show that Mr. Magee participated in weighing?

A. Well, I don't know what my notes would show.

(Testimony of Dallas A. Johnson.)

Q. Do you want your notes to find out whether you weighed butter, eggs or cheese, or to find out whether Mr. Magee helped you?

A. I remember Mr. Magee was there. Whatever I did he assisted me in doing. Now, if you want me to say specifically that I did weigh cheese or butter I can't say specffically unless I can see my notes. [2797]

Q. Can you say specifically whether Mr. Magee, on the Henry White, independently of you, weighed butter, or eggs, or cheese?

A. If I could see my notes I could say definitely.

Q. Without them you cannot answer, is that right? A. Not at this time, no. [2797-a]

Q. Are those yours or Mr. Magee's? I think they are yours? A. These are my notes.

Q. Have you refreshed your memory from your notes? A. Yes.

Q. Did Mr. Magee independently of you weigh any butter, eggs or cheese aboard that vessel?

A. Mr. Magee weighed some processed American cheese. That was Shefford cheese, I recall. And he recorded the weights, the gross weights, on some paper, if I remember correctly.

Q. Show me on your notes where it says Mr. Magee weighed some cheese aboard that vessel.

A. I used these notes to refresh my memory. I do not think that I specifically stated on these

(Testimony of Dallas A. Johnson.)

notes. However, after looking at the notes I can say that was done.

Q. Even though there is nothing on the sheet of paper. Mr. Magee's name is not mentioned on the paper, is it?

A. No, Mr. Magee's name is not mentioned on the paper.

Q. There is nothing on the paper indicating that he weighed anything, is there?

A. Well, there does not have to be anything on that particular piece of paper so that I can state that.

Q. How did it refresh your recollection that Mr. Magee——

A. Because I noted on here that in that shipment there were eight bundles of 5's—that is five pounds I assume that to be—of processed American cheese, 240 pounds, and two bags of grated cheese, and I recall I was with him on this occasion. [2798] and that he weighed that merchandise, and I recall the manner in which he weighed it.

Q. After he weighed it you weighed it, is that right? A. No.

Q. Who weighed it? Did you weigh it or did Mr. Magee?

A. It was put on the scale on one occasion. I was there and he was there. I saw what he was doing and he saw what I was doing. It just so happened he wrote the notes and I did not—as to the weights.

(Testimony of Dallas A. Johnson.)

Q. Now, you wrote the weights down, didn't you, right there?

A. No sir, that is a copy of the invoice.

Q. That is not the weights? A. No sir.

Q. Do you remember on the Phillipa whether Mr. Magee independently of you weighed any butter, eggs or cheese on that vessel?

A. Mr. Magee was not on that vessel.

Q. Did any other person independently of you weigh either butter, eggs or cheese on that vessel, if you know?

A. Do you mean outside of my presence?

Q. Outside of you?

A. I don't understand what you mean. I can tell you what happened on the boat.

Q. Did you weigh any merchandise on the Phillipa?

A. I assisted Major Evans in weighing some merchandise on that ship.

Q. Did you weigh any other merchandise independently of Major Evans?

A. No, all the merchandise was weighed when Major Evans was with me.

Q. Did he independently of you weigh any merchandise? [2799]

A. No, I don't believe so on that boat.

Q. So that anything other than eggs that were weighed on that boat you did by yourself, is that right? A. No sir.

Q. Pardon me? A. No sir.

Q. What is correct?

(Testimony of Dallas A. Johnson.)

A. I weighed some Romano Dolce cheese on that ship and he was with me at that time.

Q. Pardon me?

A. I weighed some Romano Dolce cheese on that boat and he was with me at that time.

Q. He was with you? Was he standing by the scale?

A. He was standing right with me, yes sir.

Q. Did he make any notes of the weight?

A. I don't know whether he did or not.

Q. Now, instead of going through all of this, will you tell me any ship that you were on where you weighed merchandise and made a notation of the weights and then had somebody else weigh the same merchandise and make a record of the same weights of the same merchandise?

A. Well, I think in practically every instance where Major Evans and myself weighed the eggs I think that I read the scale and he read the scale independently of one another. We both saw the scale to be in a balanced position and we took the figure off the scale as to what the weight was.

Q. A moment ago you testified that when Major Evans was busy candling eggs you were off weighing cheese and butter. Didn't you just say that this morning?

A. That is, he would be [2800] inside a little dark room there and I would be immediately outside. It takes him some time to candle a half case of eggs, so that I could be doing other things during

(Testimony of Dallas A. Johnson.)

that time. The scale is portable. You can pick the scale up and move it any place you wanted to.

Q. While he was in the booth candling the eggs you were out weighing the cheese?

A. Not always, no sir.

Q. Tell me an instance where you and Major Evans stood side by side and weighed the same merchandise other than eggs?

A. Other than eggs?

Q. Yes.

A. I believe on the Gilbert Hitchcock he arrived while I was weighing the merchandise; that it, I can't tell what period during that time he arrived. On the Phillipa he was present when I weighed the cheese. On the Cape Charles Mr. Magee was present when I weighed the cheese. On the Cape Breton Major Evans was present, I believe, during the entier time I was weighing the cheese. And if I weighed something else on that boat I do not recall right now. On the Francis Parker an agent by the name of Ellis was there while I was weighing the merchandise other than eggs, and Mr.— or Major Evans was there also during part of that time. I do not recall some of those other ships right now.

Q. By being present you mean aboard the same vessel, don't you?

A. No, I meant right with me at the time I was doing this. [2801]

Q. On the Cape Charles you weighed some butter, did you not?

(Testimony of Dallas A. Johnson.)

A. Yes, I weighed some cases containing butter.

Q. And you examined an invoice on that vessel, did you not? A. I believe I did.

Q. Can't you remember that without your memorandum?

A. What part? Examining the invoice——

Q. The details of the examination?

A. No, I can't remember the details.

Q. There are your notes. Now, on that vessel, Mr. Johnson, the invoice called for ten cases of Burdell butter, 600 pounds, isn't that right?

A. Yes, that is correct, I believe. I do not know whether it had a description as to quality of butter or not.

Q. You weighed those cases of butter, did you not?

A. I weighed some wooden boxes containing butter.

Q. What did the boxes weigh?

A. The box itself—I tested one of them—it had a tare of 8 pounds.

Q. What?

A. The box itself had a tare of 8 pounds.

Q. I asked what did the boxes of butter weigh?

A. Oh, the boxes containing butter? Well, on that particular ship this was the first occasion on which I weighed any of this, and I used a little bit different method.

Q. I asked you what the butter weighed?

A. I am explaining so that you will understand

(Testimony of Dallas A. Johnson.)

my figures when I give them to you. I checked the first box and it had a tare of 8 pounds. I put [2802] it on the scale and it weighed 68 pounds. I took the butter out and figured the tare. The rest of the boxes I merely opened with the exception of the third box, and counted the number of prints in the boxes and found that there were 60 1-pound prints in each of the boxes, and in the third box I found that there was part of the wood missing on the box, and that box only weighed 67 pounds total, including the tare.

Q. Part of the top was off?

A. Yes, I suppose it had been dropped or something and the wood broken off.

Q. Isn't it a fact, Mr. Johnson, that the butter in those cases was overweight?

A. No sir, that is not a fact.

Q. Isn't it a fact that the tare on the box is less than seven pounds?

A. Not on the box that I tested, no sir. Of course, there is also additional tare to be calculated in there—the weight of the wrappers—I didn't include that.

Q. What is the weight of the wrapper?

A. Well, I don't know. I never tested that out. I asked a person on one occasion and he figured—he said it was about three-quarters of a pound for 60 wrappers.

Q. Somebody told you——

A. No, I mean—let's see, let me figure that. No, he said that they weighed three-quarters of an

(Testimony of Dallas A. Johnson.)

ounce per wrapper. I don't recall. I won't state specifically on that because it is not material.

Q. Isn't it a fact, without any equivocation at all, that the wrappers and the case in which butter is contained weigh at [2803] the maximum of seven and a half pounds, and that each one of those cases of butter had at least half a pound overweight butter in them? Isn't that the fact, Mr. Johnson?

A. It is not a fact in this case, no sir.

Q. Which one of the cases did you take out and weigh the tare? A. The first case.

Q. Where is your note that you weighed anything except the gross weight of butter? Show me anything in your notes which you have relied on where you did anything but have the gross weight of the case? Show that to me in your notes.

A. 68 pounds gross, tare 8 pounds.

Q. Is that the basis of actual weighing?

A. Yes, actual weighing; that is, tare of 8 pounds—that is the tare of the wooden boxes.

Q. And that is the basis for the weight?

A. I don't understand what you mean.

Q. And that is the basis of the weight you actually recorded?

A. Another thing I meant to say awhile ago was on this particular instance on that first box that I weighed I figured it out to the nearest pound, because I noticed from the invoice they were billed in round figures, and it may have gone three or

(Testimony of Dallas A. Johnson.)

four ounces over, three or four ounces under, and I figured to the nearest pound on that.

Q. On what? On the 8 pounds?

A. No, on the gross.

Q. On the gross? A. Yes. [2804]

Q. So that you took and recorded on the sheet of paper the weight to the nearest pound, is that right?

A. That is as best—that is the way I recall having done it, yes.

Q. So that in weighing all these ten cases of butter which you were weighing at that time, the 68 pounds which you have written down on each instance except one, where you wrote 67 pounds, with a piece of wood missing on the cover, that would mean, would it, that the butter may have weighed 68 pounds and 7 ounces or 67 pounds and 9 ounces? Is that it means?

A. Well, if I remember correctly, it did not vary that far off of the round figure of 68 pounds. However, I could not state definitely because I made no particular effort to weigh it in ounces, because the information I had was that if the butter would be short at all, it would be short ten pounds. In other words, it would be 50 1-pound prints in a box instead of 60, so I was checking to find that out specially and not to check the particular specific number of ounces that it might be off one way or the other.

Q. With respect to the invoice on the Capé Charles you examined, did the invoice call for the

(Testimony of Dallas A. Johnson.)

same type of cheese that you weighed on that vessel—not the same type of cheese—but did the invoice describe the same type of package of cheese that you saw aboard the Cape Charles?

A. No sir, it did not.

Q. The fact is that the invoice called for 3 cases of Cheddar [2805] Trips, did it not?

A. If I remember correctly, that is what the invoice called for.

Q. And the cheese that you examined was what is called Cheddar Twins, isn't that correct?

A. Yes, two wheels instead of three wheels in the boxes.

Q. The other, Cheddar Trips, come with how many in a box? A. Three.

Q. And this order was filled which called for Cheddar Trips with boxes which were labelled "Cheddar Twins," isn't that right?

A. I don't recall seeing the label of Twins on the outside of the box.

Mr. Faulkner: I offer this paper in evidence, your Honor.

The Court: It may be admitted and marked.

(Defendants' Exhibit BQ for Identification was thereupon received in evidence.)

Mr. Faulkner: Q. You weighed butter on another occasion. Do you recall that on another occasion you weighed butter you took the tare of the cases other than on the Cape Charles?

A. There is one other ship in this list of ships I testified to where there were weights of butter

(Testimony of Dallas A. Johnson.)

recorded. Those are also gross weights and they were in cardboard boxes. I do not recall having taken a tare of the box. However, to the best of my recollection the tare of those cardboard boxes is about four pounds.

Q. Who told you that a cardboard box that butter is contained [2806] in weighs four pounds, Mr. Johnson?

A. Oh, I think I tried it out on one occasion to find out how much it weighed.

Q. You found it weighed three pounds, didn't you? Didn't you? Yes or no?

A. No, no, I don't believe I did.

Q. Well, did you ever weigh——

A. That four pounds is an estimate.

Q. Isn't it a fact that the case and the wrappers for butter in a 60-pound carton, fiber carton that contains butter, with the weight of the carton and the wrappers around each cube of butter, will not exceed three and a half pounds? Isn't that right?

A. I do not know that to be a fact.

Q. Is there any question in your mind, Mr. Johnson—on what ship was it that you weighed butter?

A. I don't know. It is in my notes. It might be the Cape Breton.

Q. It migth be what?

A. I say it might be the Cape Breton there. I am not positive. I guess that is not it.

Q. You take them. You might be able to put your hands on them, Mr. Johnson.

(Testimony of Dallas A. Johnson.)

A. The Edmund Ross.

Q. The Ross. There were 15 cases of butter weighed, were there not?

A. Yes, that is correct.

Q. What was the maximum weight of the butter in those cases?

A. The maximum weight was 65 pounds, 14 ounces gross. The minimum weight was 62 pounds, 12 ounces gross—11 ounces gross. Those are in cardboard boxes, I remember.

Q. Do you remember what the average of the weights on that [2807] vessel is over the 60 pounds?

A. I would say that the average gross weight would—no, I haven't figured it out, because I have no way of knowing what the gross was on each of the boxes—I mean the tare. I didn't weigh the tare on each box.

Q. The only time you did that was when you weighed the wooden box?

A. Yes, that is the only time.

Q. No difficulty in weighing the tare on the cardboard boxes, was there, Mr. Johnson?

A. No, but as I said before, we had been informed that the boxes would be ten pounds off, so that would be noticeable even in the gross weight.

Q. When you took the stand on your direct examination were you requested by Counsel for the Government to try to avoid any reference in your testimony to the weighing of butter?

A. No, I merely answered the questions as he asked them.

(Testimony of Dallas A. Johnson.)

Mr. Faulkner: I offer in evidence the weights of the butter recorded by Mr. Johnson on the second page of Defendants' BU for Identification.

The Court: It may be admitted and marked.

(Defendants' Exhibit BU for Identification was thereupon received in evidence.)

Mr. Faulkner: Q. Now, there was a certain instance that you testified to yesterday where certain cases of eggs were examined and weighed by Captain Evans then, and then there were seven cases of eggs which you weighed. Do you recall that [2808] vessel?

A. I didn't get the question, the entire question.

Q. There was one instance that you referred to yesterday—I think it was on the Francis W. Parker—in which you testified that Major Evans—Captain Evans then—weighed certain inspected cases of eggs and that you weighed some cases that were not stamped?

A. I don't recall having stated that in those specific words. I think Captain Evans did the other day.

Q. Pardon me?

A. I think Major Evans said that the other day, but I do not recall having said it.

Q. I thought you referred to the incident and said that Major Evans weighed some of the cases and that you then, without opening them and without inspection, weighed some cases of eggs, and I think you said that you took some eggs out of those cases.

A. What ship was this again?

(Testimony of Dallas A. Johnson.)

Q. The Francis Parker?

A. If I see my notes I might be able to answer that better.

Q. Without your notes you would not be. [2809] Is that the vessel where you weighed some cases that were not inspected?

A. I assisted Major Evans in weighing some of these cases that were not inspected.

Q. What?

A. I assisted Major Evans weighing some of these cases that were not inspected, that is, that bore no inspection stamp.

Q. You assisted him in weighing——

A. We worked together.

Q. You heard his testimony that he did not weigh those cases, that you weighed them?

A. I didn't hear him testify to that.

Q. Will you give me the weights of the seven cases that you weighed?

A. I didn't weigh these cases independently of Major Evans.

Q. You have his figures, don't you?

A. Yes.

Q. You testified to them on direct examination?

A. I have some figures that I recorded here, if you like me to read those.

Q. I will ask this question: What did the cases of eggs weigh which were not stamped?

A. The gross weights I have as 35 pounds 6 ounces, 33 pounds 4 ounces, 34 pounds 8 ounces,

(Testimony of Dallas A. Johnson.)

33 pounds 8 ounces, 32 pounds 8 ounces, and 34 pounds 8 ounces.

Q. Those are gross weights? Look again.

A. Excuse me. I meant net weights.

Q. Yes. Those are net weights?

A. Yes. I meant net weights.

Q. How many ounces under the requirements for small eggs do [2810] those seven cases run, do you know?

A. I didn't average them out.

Q. It is a fact that those figures show, that you have just recited, that in the seven cases of eggs, that for those cases to average 34 pounds, the weight of a Small egg, that they are 12 ounces, the seven cases combined are 12 ounces under the average weight of 34 pounds a case; isn't that right?

A. I don't know. I didn't figure the average weight.

Q. Well, you have from time to time referred in your notes and in your testimony to "Peewee" eggs, haven't you?

A. I may have that in my notes, I don't recall testifying to it.

Q. May I see the eggs that were brought in yesterday? You brought a box of eggs here. At some stage of your investigation you thought that it would be well to take some samples, is that right?

A. Well, yes, I thought it might be well to have some of the eggs, take some of the eggs back to the office to preserve.

Q. You, of course, picked out something that

(Testimony of Dallas A. Johnson.)

would fairly represent the general weight of the case you examined, didn't you?

A. We picked them out with that intention. There were some of the eggs, I would say the eggs on the Francis Parker were perhaps a slight bit smaller than the average of the eggs in those small cases. There were some smaller than that and some larger than that. However, I merely picked those out to have as indication of the eggs that were in the [2811] case.

Q. These eggs don't even resemble the size of eggs that were in the cases that averaged 12 ounces, those seven cases under 34 pounds, do they?

A. Those eggs were in those cases.

Q. But they don't represent them; do they?

A. I don't know what a case of eggs that size would weigh out. I would think it would be under possibly 32 or 33 pounds. I don't know what the case would weigh out if all the eggs in there were that size, but there were quite a quantity that were that size, however.

Q. Did you pick those eggs out and bring them into this court as an illustration of the representative size eggs that you found of those eggs in these cases of small eggs? "Yes" or "No."

A. Yes, I would say that I did pick them out for that purpose.

Q. Now, I will show you some eggs. Do you want to look at these eggs, Mr. Pratt?

Mr. Pratt: Sure.

Mr. Faulkner: Go right ahead.

(Testimony of Dallas A. Johnson.)

Q. You don't need any notes this time, Mr. Johnson. Will you look at those eggs, Mr. Johnson? Would the eggs that you saw on all of these ships, every one of them, which had a weight of around 33, 34 pounds, 32 pounds and ounces, would the general appearance of those eggs be larger or smaller than the eggs in the box you hold in your hand?

A. I would say [2812] they would be, possibly, a few larger, probably 60 to 70 percent, maybe 80 percent would be smaller than these.

Q. If I told you, Mr. Johnson, that those eggs you hold in your hand were from a case that was four or five pounds lower in weighf than the average weight of the cases you found on the various vessels, would your testimony still be the same, that the eggs you saw were smaller than those you hold in your hand?

Mr. Pratt: I object to that question. In the first place, he is not attempting to qualify as an expert on eggs, either as to the size or the quality of eggs. How could he give an intelligible answer to the question? That is beyond me. I think this testimony is unintelligible and incoherent.

Mr. Faulkner: I think what Mr. Pratt says is merely a restatement by the Government lawyers of my objection when these same witnesses came in on direct examination and called attention to the eggs over my objection, and testified that eggs were smaller, that they were "Peewees", and as to every

(Testimony of Dallas A. Johnson.)

ship that they opened the eggs on they were small eggs.

Mr. Pratt: By weight.

Mr. Faulkner: I am asking on the same subject matter, if the eggs on his lap, if the eggs that he saw were, a great majority of them, smaller or larger.

The Court: The Court is prepared to rule. Objection sustained. [2813]

Mr. Faulkner: Q. In the various cases of eggs which you have opened up, which you opened up on board of the vessels, on any of these vessels—withdraw that. On certain of these ships you opened up cases of eggs? A. Yes.

Q. Calling your attention particularly to the case of eggs that did not bear a Department of Agriculture stamp, you opened up that type case of eggs, did you not? A. That is correct.

Q. You expressed the opinion on your direct examination that the eggs that you saw were small eggs?

A. I said they were smaller than the other eggs bearing the Department of Agriculture stamp.

Q. So that you made a comparison——

A. Yes——

Q. Between——

A. Both by observation and by weight.

Q. Between the——

A. Both the cases——

Q. Please wait for the question to be finished. So you made a comparison between eggs you saw

(Testimony of Dallas A. Johnson.)

in an unstamped case and eggs you saw in a stamped case? A. Yes.

Q. The eggs you saw were smaller?

A. They were small.

Q. In the unstamped case?

A. I felt they were smaller.

Q. I will ask you if the eggs you saw in the unstamped case were smaller or larger than the eggs you hold in your hand.

A. I could not state that definitely right now, because I don't have the eggs that I saw then to compare with these that I have now.

Q. You haven't go the eggs that were in the stamped case, [2814] either, have you?

A. No, but I remember what I saw at that time.

Q. At all events, Mr. Johnson, you will not indicate an opinion whether these eggs contained in this box are larger or smaller than those that you say in the various unstamped cases, is that right?

A. I couldn't state definitely, no.

Q. You have just examined a box of eggs which I will ask to be marked as Defendants' Exhibit for Identification.

(The box of eggs was marked Defendants' Exhibit BZ for Identification.)

Mr. Faulkner: Q. I will ask you to look at these eggs that you brought in here yesterday. You have there now a case of eggs which the clerk has just marked, on your lap.

A. That is so.

Q. Are the eggs in that box that you hold in

(Testimony of Dallas A. Johnson.)

your hand larger or smaller than the eggs that were in the box which just left your hand?

A. You mean in weight or size?

Q. Size.

A. If I may see that box——

Q. No, very respectfully, Mr. Johnson. You just said you don't remember eggs that you saw on the pier. You have just looked at those eggs, they have just been in your possession. I would like you with those in your possession to compare them by your recollection with the size of the eggs in that box which you just looked at?

Mr. Pratt: I insist if he is to make a comparison he [2815] is entitled to have the box in his hand.

Mr. Faulkner: I agree to what he is entitled, but the point of the comparison is his memory and the manner in which he is avoiding giving me the answer.

The Court: If he requests this comparison, he is entitled to it. You can show them to him.

Mr. Faulkner: Q. Can you make the comparison without again holding the package in your lap?

A. No, I don't believe I could make a very good comparison without looking at them both at the same time.

Q. In other words, your memory now is not clear enough of the size of those eggs to make a comparison of the box in your lap. When I say "those eggs," I mean the box that is now called Defendants' BZ for Identification.

(Testimony of Dallas A. Johnson.)

A. You want me to give an opinion and I don't want to give an opinion unless I can look at both of them at the same time to form an opinion definitely.

Q. When you came into court on your direct examination you were basing your opinion on a recollection of the size of eggs two years ago.

A. I recall at that time that I particularly noted that the eggs in the case by possibly a negative examination, appeared to be smaller to me than the eggs in the case which did bear inspection stamps. I had them both open at the same time, and I had the weights also to go by. I had a scale, I weighed the eggs. [2816]

Q. But all that you have now is a memory of that?

A. I have the weights recorded, I have a memory of what happened.

Mr. Faulkner: I except to the court's direction for the particular purpose of this examination on the credibility of his testimony as to memory that I must give him these. Let the record show the witness is now taking eggs out of each of the boxes and holding them in his hand, and comparing them. Is that an accurate statement of the record, Mr. Pratt?

Mr. Pratt: I think so.

Q. When you made that comparison you took the largest of the eggs in the box that is in evidence, did you not?

A. Yes, I took the largest of these, which appears to be the largest, and compared them with

(Testimony of Dallas A. Johnson.)

the eggs in the other, because I just wanted to see for my own information how they compared.

Q. You picked the largest of the box of eggs, the largest egg in the box that is in evidence, and you compared that to size in the box that is marked for identification that was brought into court this morning. Now, I will ask you which eggs are the smaller in size, the eggs in the box you brought in here yesterday, or the eggs in the box I brought in here this morning?

A. Of course, this is only my opinion, and in my opinion two of the eggs in the box that we brought in which are in evidence are smaller than the eggs in the box which you brought in. One of the eggs in the box which we [2817] brought in appears to be the same size, approximately—I don't have a trained eye for that sort of thing—approximately the same size as about half of the eggs in the other case.

Q. Now, Mr. Johnson, in the year 1944 you made certain observation of weights and have testified to them in this courtroom, of cheese aboard various vessels. You made a further investigation as to short-weight cheese in relation to the firm of Nye & Nissen, didn't you? "Yes" or "No."

A. I am trying to recall. You mean to other than War Shipping vessels?

Q. Well, yes.

Mr. Faulkner: May the record show a long lapse between the question and the answer?

The Witness: I am trying to recall. I re-

(Testimony of Dallas A. Johnson.)

member calling on at least one retail store in town which received merchandise from Nye & Nissen. I am trying to recall at the present time what the purpose of our call was. I cannot recall right now exactly what the nature of our conversation was, although I know it was in regard to merchandise delivered to those stores.

Mr. Faulkner: Q. Mr. Johnson, you have in your possession and under your control writings and reports made at the time of your investigation which will show every ship that you called on in that investigation, haven't you?

A. I beg your pardon?

Q. I say, you have possession, your department right down at 111 Sutter Street, or in this building, papers prepared by [2818] you that will refresh your recollection of every ship you went on and every article of merchandise you examined and weighed, haven't you?

A. I won't say we have notes on every ship that we went on. I would say that—that our official reports that we submit contain references to most of the ships that we went on. However, I remember one or two ships that I went on that I did not make any report on, because I did not see anything, that is; it was after the ship got back in port and the nature of the investigation was negative.

Q. In the year 1944, or in the year 1945, did you conduct an investigation in the firm of Nye

(Testimony of Dallas A. Johnson.)

& Nissen in respect to the sale and delivery of cheese?

A. In April and May of 1944?

Q. No, I don't know the time. I am saying in 1944 or 1945.

A. I was in the plant of Nye & Nissen in the months of October and November, 1944.

Q. Did you see a man named Mr. Eichler?

A. Yes.

Q. Did you ask him for records relating to the sales of cheese?

A. I asked him, and I asked Mr. Monchbarsh for records.

Q. I asked you a question, just as to whether——

A. For records. I am trying to tell you what I asked him for.

Q. I asked you if you asked him for records relating to the sales of cheese.

A. No, I don't think specifically I asked him for records pertaining to the sales of cheese. I asked him for records pertaining—I asked him for the invoices of sales by the City Sales Division of the firm of Nye & Nissen, itself, [2819] during that period, and I asked him for inventory records taken at the end of the month during that period.

Q. Those records were given to you, weren't they?

A. Yes. We asked for other records which were not given us, however.

Q. The only request that was refused or de-

(Testimony of Dallas A. Johnson.)

clined was your request to take the records out of the plant; isn't that correct?

A. I don't recall that we requested to take the records out.

Q. Isn't it a fact every record you asked Mr. Eichler for he gave you, and then when you asked him if you could take those records out of the plant he said, "We have to phone our lawyer," and he says, "You can see all the records in the plant but you can't take them away"; isn't that the only declination that Mr. Eichler gave you at the time in connection with your examination?

A. No. We asked for other records that he did not give us. He gave us the story that he didn't have them, but he didn't give what we asked for.

Q. You asked him for storage records from icehouses in a past period, didn't you? Isn't that right?

A. Yes, that was one of the things.

Q. He didn't give them to you?

A. No. I don't know whether he had them or not.

Q. He told you that he didn't have them?

A. Yes, that is what he told me.

Q. He told you you only had to go to the icehouse to reproduce them, didn't he?

A. I don't think he told me that. [2820]

Q. He explained to you, did he not, that when the season was over he explained the size of these records, the multiplicity of the records, and that

(Testimony of Dallas A. Johnson.)

when the season was over and the goods went in the icehouse and after the records were no longer of any value that they destroyed them, as a routine matter, year after year; did he explain that to you?

A. I wouldn't say he told me that, no.

Q. In that period of time, October of 1944, or whatever the month was, you had possession of the inventories of the firm of Nye & Nissen for the months of April and May, 1944, showing the quantity of cheese they had on the beginning of particular intervals, and there were sufficient inventories and sales tags to show every sale of cheese during that period, and an inventory after the sales were completed, didn't you?

A. No, we didn't see inventories of all of the merchandise of Nye & Nissen during that period. I think we saw the inventories of the City Sales Division.

Q. You saw the balance of the cheese—referring to the cheese, you saw the quantity of cheese on hand on any given date, you saw the quantity of cheese that came into the plant during any given time, and you saw the records showing sales of cheese during the same period of time, and the balance of cheese left in that plant, didn't you?

A. No.

Q. What was missing?

A. A lot of the details were missing.

Q. Tell me something that Mr. Eichler did not give you when you [2820] were out there in October or September, when you could not sit down

(Testimony of Dallas A. Johnson.)

and just take the inventory of the cheese, the amount that came in, and set that up on one side, and the sales on the other, and compare it with the inventory at the concluding date; tell me one thing that was missing for you to have done that there?

A. Because the purchases of the corporation, itself, were missing.

Q. Did you not have given to you the record showing the "in" movements?

A. The what?

Q. The "in" movements; the movements of merchandise into the plant of Nye & Nissen, which included the movement of cheese into their plant at 17th and Missouri Streets.

A. I didn't see any such record as that.

Q. The record you say you did not see was a record that described what?

A. That is—you are referring to "in" movements. I am referring to it as purchases, how it got into the plant. That is what I mean. I don't recall seeing a purchase of the corporation during that period.

Q. I did not ask you whether you saw anything that was purchased. I asked you if you saw records which showed the movement of merchandise into the plant, whether it came in by purchase or by production.

A. No, I don't recall seeing such a record as that.

Q. Did you ask for one?

A. I believe we did.

(Testimony of Dallas A. Johnson.)

Q. Just what did you ask for, Mr. Johnson?

A. You mean in [2821] regard to cheese?

Q. Yes. What paper did you ask for in connection with the purchase, or in connection with the "in" movement of merchandise into their plant?

A. Well, I think I asked, either myself or Mr. Magee asked Mr. Eichler for—if they kept records, that is, ledger records or any other records which will give the detail of the purchases of cheese during the period of January through May of 1944. That is, by details, we meant the specific type of cheese that was brought, not just quantities. I think perhaps I did see a ledger reflecting quantities, total quantities and prices. However, we did not see any record nor did we get any record pertaining to the particular type of cheese coming into the plant.

The Court: We will take a recess.

(Recess.) [2822]

Mr. Faulkner: Q. Mr. Johnson, how long were you out in the plant of Nye & Nissen examining records?

A. I would say approximately two and a half to three weeks.

Q. Pardon me?

A. Two and a half to three weeks, until they told us we could not come out there any more.

Q. Who told you that?

A. Mr. Eichler, I believe.

Q. Wasn't the last conversation you had with Mr. Eichler, Mr. Johnson, that he told you his

(Testimony of Dallas A. Johnson.)

lawyer said you could not take the Nye & Nissen records out of the Nye & Nissen plant, and that you then did not come back any more?

A. No sir, that was not the last conversation as I recall it.

Q. Who was present at the conversation when you were told not to come back?

A. The conversation——

Q. I ask you who was present?

A. I was going to say the conversation took place in the conference room, I believe, there, which is directly above a refrigerator. I believe Mr. Eichler was the only person present. Of course, at that time he told me——

Mr. Faulkner: I asked the witness who was present, your Honor. That is all I asked him.

The Court: Q. Who was present?

A. Mr. Eichler.

Mr. Faulkner: Q. Did you take photostatic copies of records out there? A. No sir.

Q. And did they make any objection to your taking photostatic copies of their records?

A. I do not think we made such a [2823] request.

Q. Was it suggested to you that if you wanted any record they would give you a copy or you could take a photostatic copy?

A. No sir, I do not believe any suggestion was made to that effect.

Q. As early as 1943 the firm of Nye & Nissen had furnished your agents with copies of their records on request, had they not? December of 1943?

(Testimony of Dallas A. Johnson.)

A. Not that I recall, no.

Q. You do not know anything about any agents acting under your coming out there in December of 1943 and talking to the firm of Nye & Nissen about their business and securing a copy of records?

A. I remember that an agent went out there in November and December, 1943, to inquire into the switching of some eggs on an Army order.

Q. Did he get a copy of a record?

A. I don't know whether he got a copy of a record or not.

Q. You do not know what he inquired into, do you?

A. No, except I remember discussing it with him at one time.

Q. But you were not there when he talked to the firm of Nye & Nissen?

A. No, I was not there at that time.

Q. What was the name of that agent?

A. Herman Weber.

Q. Herman Weber? A. Yes.

Q. Is he still in San Francisco?

A. I don't know where he is. He is no longer in the Bureau.

Q. In the notes that you have made I think there are only two [2824] instances where you recorded any weight of butter, but I will ask you to look at your notes and tell me whether on any occasion other than the two you noted you recorded the weights of butter on any of the vessels you testified to on direct examination?

(Testimony of Dallas A. Johnson.)

A. I see no other note here as to the weighing of butter. I remember on another ship I weighed the butter.

Q. You haven't got any notes on it, have you?

A. I don't know whether I have or not. I haven't referred to it for a long time. Not here, no.

Q. Practically every ship that you went aboard had butter on it, didn't it? Butter which came from Nye & Nissen?

A. I wouldn't say practically every ship. I would say the majority of the ships did.

Q. The Cape Breton had butter on it?

A. Yes, it had butter on it.

Q. The Gilbert Hitchcock had butter on it, didn't it? I will withdraw that. The Cape Breton, the Gilbert Hitchcock, the Cape Charles, the Francis Parker, the Henry White, the Edmund Ross, the William Coulter, all had butter, didn't they, and the Phillipa?

A. Yes, I think they all had butter on them.

Q. And the Phillipa? A. Yes.

Q. That leaves how many vessels that did not?

A. Well, you asked me the general question as to the majority—practically [2825] every ship I went on. I went on a lot of other ships other than those.

Q. I meant those that you referred to on direct examination. In the interests of time I think the Czechoslovakia Victory is the only ship that did not have butter on it.

A. I don't know whether the Gilbert Hitchcock

(Testimony of Dallas A. Johnson.)

had butter or not. I have no notation as to their having butter.

Q. Your attention was called on your direct examination to the invoice that you identified of the firm of Nye & Nissen?

A. Yes, but I do not have a copy of the invoice in my notes. I could not definitely recall without looking at the invoice.

Q. This is not the one that you saw, but it is a counterpart. It starts in with 25 cases of butter, doesn't it?

A. Yes, that is what the invoice starts in with.

Q. So that having in mind that you identify the invoice, there was butter aboard that boat, wasn't there?

A. I presume there was. I do not recall having checked to see if there was any butter, however.

Q. In other words, at the time you went down to the Gilbert Hitchcock you were not interested in butter, is that it?

A. The Gilbert Hitchcock—no, I don't think I was interested in butter at that time. I think it was later, a couple or three days later, that one of the former truck drivers told us about them shorting the butter.

Q. Is that your best recollection?

A. That is my best [2826] recollection.

Q. When you went aboard the Gilbert Hitchcock you had already been aboard the Cape Charles and weighed butter, hadn't you, two days before, three days before?

(Testimony of Dallas A. Johnson.)

A. Yes, yes, I had.

Q. So that when you went aboard the Gilbert Hitchcock you knew just as much about butter as you did when you went on the Cape Charles two days before, isn't that right?

A. Yes, I suppose so.

Q. And you weighed the butter on the Cape Charles, but you did not weigh it or make any note concerning the Gilbert Hitchcock?

A. I did not weigh all the butter on the Cape Charles.

Q. Did you weight any of it?

A. I weighed the first case and the third case, and I checked the others to see whether or not there were 60 1-pound prints.

Q. So that on the 29th of April, 1944, you were interested in the weight of butter, weren't you?

A. I was interested in the number of prints in the cases of butter.

Q. Did you take all of the butter out of the case on the Cape Charles?

A. The first case.

Q. You took all the butter out. Were there 30 prints or 60 prints?

A. There were 60 prints.

Q. They were 1-pound prints, is that right?

A. To the best of my recollection, that it true.

Q. On each instance when you weighed butter did you take all the butter out of the case or carton?

A. No sir. [2827]

Q. Is that the only instance?

(Testimony of Dallas A. Johnson.)

A. The only instance that I can recall. I recall one other instance where we just checked the tare on a box of butter. I did not make any record of it, though.

Q. Do you know a man named Nystrom?

A. Yes sir.

Q. When did you first meet him?

A. I met him on the evening of April 25, 1944.

Q. Have you any notes on that?

A. No sir.

Q. You remember that date without notes?

A. I remember that date after referring to a sworn statement that he gave us at that time.

Q. In other words, your memory of the time that you met him is based upon a sworn statement he made, is that right?

A. That is true, and the fact that also I was in Washington, D. C., until the first—I mean the last Monday in April.

Q. You heard his testimony in this court, didn't you? A. Yes sir.

Q. He testified that he first met the Department of Justice agents as early as the 8th of April, 1944.

A. No, I didn't hear him testify to that.

Q. Did you meet him about the 8th of April, 1944?

A. No sir, I was in Washington, D. C., then.

Q. Regardless of who he did meet up to the 25th of April, you met him then, isn't that right?

A. I met him on the evening of the 25th of April. [2828]

(Testimony of Dallas A. Johnson.)

Q. It is a fact, is it not, that there is not a single instance of short weight butter and small eggs mingled with inspected eggs or under weight cheese until you met Mr. Nystrom, isn't that right, delivered on the waterfront by the firm of Nye & Nissen? A. That is not true.

Q. Can you name an instance where you examined and weighed cheese aboard a vessel on the San Francisco or Oakland waterfront of goods that are supposed to have come from the firm of Nye & Nissen that did not have the weight represented on the invoice prior to the 25th of April, 1944?

A. No, sir.

Q. Can you name an instance after Mr. Nystrom quit the firm of Nye & Nissen on the 13th day of May, 1944, where the weight of cheese did not correspond to the invoice covering the cheese?

A. I believe that the ship by the name of the Charlotte Cushman had short weight butter on—I mean, short weight cheese on, and I don't believe Mr. Nystrom had anything to do with that.

Q. What ship?

A. The Charlotte Cushman.

Q. Have you any record of the Charles Cushman in here? A. Charlotte.

Q. Have you any record of the Charlotte Cushman in court?

A. No, I have no record of it in court. You asked me to recall. I said I think it was after Mr. Nystrom left.

(Testimony of Dallas A. Johnson.)

Q. And you examined cheese aboard that vessel, is that right?

A. I went aboard that vessel. I think I recall examining the [2829] cheese on board that vessel also.

Q. What is your best recollection of the date you were aboard the Charlotte Cushman?

A. I would say it would be about the 13th, 14th or 15th of May, 1944.

Q. Did you record, as you did on these other vessels in these notes here, the weights of cheese on that vessel?

A. I do not recall whether I did nor not. I was in company with somebody else.

Q. What kind of cheese was on board the vessel?

A. I don't recall without having something to refresh my memory.

Q. Did you make any note of it for your Department?

A. I say I was with someone else and I do not recall whether they made notes or I made notes.

Q. Who was the person you were with?

May we show the lapse of time between the question and answer? May the record show that, your Honor?

A. It may have been either Agent Magee, Agent Ellis, Agent Sullivan, or possibly one of the other agents in our office.

Mr. Faulkner: Q. Do you know whether it was in April or May?

A. It was in May, I am fairly certain.

(Testimony of Dallas A. Johnson.)

Q. What?

A. I am fairly certain it was in May.

Q. Was it before or after the 15th of May?

A. That is what I don't recall.

Q. Was any member of the Veterinary Corps present with you?

A. I think Major Evans was with me. [2830]

Q. When was the last time you accompanied either Major Evans or Colonel Hand to any vessel on the waterfront in respect to the firm of Nye & Nissen?

A. I would say it would be around the last of May.

Q. Did you go in the month of June?

A. I do not remember whether I did or not.

Q. Now, Mr. Johnson, you have in addition to your work on the waterfront in this case interviewed many witnesses, have you not?

A. Yes sir.

Q. You have on occasions, have you not, in connection with interviewing witnesses, suggested to them that if they did not aid you their citizenship would be revoked?

A. No sir, I have never made that statement.

Q. Did you ever discuss with any witness or prospective witness or person the matter of their citizenship in respect to aiding you in your investigation? A. No sir.

Q. Did you ever discuss with any prospective witness or any person that you were interviewing

(Testimony of Dallas A. Johnson.)

the matter that they had a choice of being a witness or a defendant? A. No sir.

Q. Do you know Mr. Menges? A. Yes sir.

Q. Didn't you and Mr. Magee together state firmly and flatly to Mr. Menges at the time you interviewed him that he had a choice and he had to make up his mind then and there whether he wanted to be a defendant in the case or a witness for the Government?

A. No sir, I did not participate in the [2831] interview with Mr. Menges in any manner whatsoever.

Q. You were not present when he was interviewed?

A. No sir, I was out of town on that date.

Q. What date was he interviewed?

A. I don't know, but I was out of town, I recall, when Mr. Menges was interviewed.

Q. In other words, whatever date he was interviewed you were out of town?

A. Or else if I had been here I would have participated. That is how I recall.

Q. You never talked to Mr. Menges except after the case started, you may have talked to him in the hall, is that your testimony? Did you go out to his house? A. No sir.

Q. Never?

A. I was out there on one occasion and he was not at home.

Q. Didn't you go out to his home and he talked to you about his boy or something coming home

(Testimony of Dallas A. Johnson.)

from the service, and you sat down, you and Mr. Magee, and had a conversation with him?

A. No sir.

Q. Were you ever in his house?

A. I was in the inside of the door downstairs. That is as far as I got.

Q. And you did not talk to Mr. Menges?

A. No, as I said, he was not at home the day Mr. Magee and I called that day.

Q. Mr. Johnson, how many times did you talk to Mr. Nystrom?

A. During the course of our investigation of the case?

Q. From April 25 to the 15th of May?

A. I would estimate [2832] about three or four times.

Q. How many times——

A. About two times and that was on the telephone.

Q. How many times did you get a message purporting to have come from Mr. Nystrom relating to a delivery?

A. I would say about six or seven times. Of course, some of those deliveries we did not get from Mr. Nystrom; the Cape Breton, for instance, we got from the Matson Navigation Company, and Mr. Nystrom did not deliver to that ship. We found Small eggs on that ship also.

Q. Mr. Johnson, I just asked you how many times you talked to Mr. Nystrom and you like to talk about Small eggs.

(Testimony of Dallas A. Johnson.)

A. Well, I thought you meant something else.

Q. I just wanted to know how many times you talked to him. How many times did you get a message from him? A. I answered that.

Q. In your investigation in the months of April and May, you knew how many trucks of merchandise were being used to deliver merchandise to the waterfront by the firm of Nye & Nissen, didn't you?

A. No sir, I did not.

Q. Didn't you know that they had three trucks devoted to deliveries to the waterfront in April and May of 1944? A. No sir.

Q. Did you check other than the instance of the Cape Breton where there was a delivery made by any driver other than Mr. [2833] Nystrom between the period of April 25th and May 13th?

A. May 13th?

Q. May 13th.

A. I believe I did. I can't recall the name of the ship, however.

Q. It is a fact, is it not, without any question, that all of the deliveries during the period from April 25th to May 13th that you checked that were not delivered by the driver Nystrom, the weights and the qualities matched the invoice?

A. That is true.

Q. Name me a ship.

A. The Cape Breton.

Q. Name another, if you can.

A. James King.

Q. What? A. James King.

(Testimony of Dallas A. Johnson.)

Q. You have no notes here about the James King, have you?

A. No, I didn't testify to that on direct. No one ever asked me that question at any other time except right now.

Q. Now, on the Cape Breton, who was the driver involved; do you know? A. Mr. Ransom.

Q. Pardon me? A. Mr. Ransom.

Q. Ransom? A. Yes, sir.

Q. The man who was here in court?

A. Yes, sir.

Q. Then the Cape Breton and the James King, is that right?

A. Yes, the butter was short on the James King.

Q. Pardon me?

A. The butter was short on the James King.

Q. The butter?

A. Yes. That delivery was not made during that period. It was made at a previous time. However, I [2834] checked it during that time.

Q. I am asking you during the period that Nystrom was a driver of the firm of Nye & Nissen, if other than the Cape Breton you can name a ship where there was——

A. Yes, I think the James King was delivered before Nystrom ever started to work there.

Q. Before Nystrom started to work for you?

A. There. I said for Nye & Nissen.

Q. He started to work long before April 25th?

A. Yes. The delivery to the James King was made in January. I checked it in April or May.

(Testimony of Dallas A. Johnson.)

I found that the cheese—I mean the butter was short in the delivery.

Q. Mr. Johnson, I asked you if during the period from the time you said in this court you first met Nystrom, April 25th, to the day that Nystrom left Nye & Nissen, you could name a ship where there was some differences between the invoice and the merchandise that was delivered, other than by Nystrom, and you said the Cape Breton.

A. Yes.

Q. Now, I asked you to name me another ship during that period.

A. You asked me to name another ship that I went on during that period where there was anything wrong.

Q. Yes. A. I said the James King.

Q. And now you say the James King was in January, 1944.

A. It was delivered in January and I checked it in May.

Q. Pardon me?

A. It was delivered in January and I checked it in May. [2835]

Q. You checked it in May?

A. Yes, after it got back in port.

Q. In other words, the delivery you were checking in May, 1944, was something that had been delivered in January, 1944, is that right?

A. Yes, that is correct.

(Testimony of Dallas A. Johnson.)

Q. Other than a delivery after a vessel had completed a voyage and other than the Cape Breton, can you name a ship between the 25th of April and the 13th of May where the merchandise did not correspond to the invoice?

A. The Sacajervea.

Q. The what?

A. The Sacajervea did not correspond to the invoice.

Q. That was a ship that you went aboard in February, 1944, isn't it?

A. No, sir, I went aboard the Sacajervea in either the last part of April or the first part of May, 1944.

Q. What merchandise did you examine?

A. Cheese.

Q. What was the weight of the cheese?

A. I do not recall. It was approximately 20 or 25 pounds short in weight, though.

Q. Who delivered the cheese on that vessel?

A. I do not know.

Q. Mr. Nystrom did, didn't he?

A. Yes, but your question did not include Mr. Nystrom—

Q. But you know that Mr. Nystrom delivered it, don't you?

A. I believe he did. I am not sure, however.

Q. Do you know any other vessel? I will withdraw the question, your Honor.

The Witness: Is this just cheese and butter, or do you want cheese, butter, and eggs, all together?

(Testimony of Dallas A. Johnson.)

Mr. Faulkner: May I have the question read?

The Court: You withdrew your question. Reframe the question.

Mr. Faulkner: Q. Cheese. A. Cheese?

Q. Cheese.

A. No, no other vessel that just cheese was wrong on it. I think there were one or two others, but I don't recall the names of them.

Q. How much cheese was on this vessel, the Sacajervea?

A. I don't recall without having my notes, but I do recall it was short in weight.

Q. What kind of cheese was involved?

A. Cheddar cheese.

Q. Is that the only kind?

A. I do not recall specifically without my notes.

Mr. Faulkner: That is all.

Redirect Examination

Mr. Houck: Q. When did you first go to the Nye & Nissen plant and ask for any records, Mr. Johnson?

A. I believe it was about the 30th or 31st of October, 1944.

Q. And you say they were there two and a half weeks or three weeks at the most?

A. Yes, approximately two and a half to three weeks.

Q. During that time you asked for certain records, is that right?

A. Yes, we asked for a number of records during that time.

(Testimony of Dallas A. Johnson.)

Q. And all of them were not produced?

A. No, sir, all of them [2837] were not produced.

Q. Did they produce any records reflecting the purchase of Cheddar cheese at 30 pounds a wheel?

A. No, sir, they did not.

Q. Did they show any sales of Cheddar cheese wheels at 30 pounds a wheel? A. Yes, they did.

Q. And for what period was this? What period did the records cover?

A. It covered—the records that I checked covered from the 1st of January, 1944 until approximately the middle of May, 1944.

Q. You checked the purchases and sales of Cheddar cheese during that period, is that correct?

A. Yes, of the City Sales Division.

Q. To whom were those sales of Cheddar cheese at 30 pounds a wheel?

A. They were to the Government.

Q. Were you furnished records showing sales of Cheddar wheels to private parties?

A. Yes, I was.

Q. What were the weights of those sales?

A. The average weights would run between 24 and 26 pounds per wheel.

Q. Did they furnish any records showing sales of Cheddar cheese wheels weighing as high as 30 pounds to private parties?

A. I don't recall exactly. I think maybe once or twice they did, but not more than that.

Q. Of the records which you asked for, can you

(Testimony of Dallas A. Johnson.)

give me an idea about what proportion was furnished to you?

Mr. Faulkner: How can you compare the proportion of [2838] what you got with what the man said he did not have?

Mr. Houck: Q. How many requests for records were granted?—regardless of how many records would have been produced?

A. Well, basing it on the number of requests, I would say approximately 80 percent of my requests were fulfilled.

Q. 80 percent of your requests were fulfilled and 20 percent of them were not? A. Yes.

Q. Of the records which were furnished to you, could you arrive at any conclusions as to the sales or purchases of cheese or butter or eggs——

Mr. Faulkner: We object to that as calling for the opinion and conclusion of the witness, your Honor. We are not bound by his ability to reach a conclusion from examining a record.

The Court: The objection will be sustained.

Mr. Houck: Q. You testified that you weighed butter on some of these ships? A. Yes.

Q. And you noted that there were the full 60 pound-prints or 60 prints in each case, is that correct? A. Yes, that is correct.

Q. Did you weigh the individual pound-prints?

A. No, I never test-weighed any individual pounds.

Q. So you do not know whether or not they would be the full pound, or not?

(Testimony of Dallas A. Johnson.)

A. No, I do not know that.

Q. Did you discuss butter with Mr. Nystrom at all on any occasion you talked to him?

A. No, I do not believe I ever [2839] talked to Mr. Nystrom about butter.

Q. Why was it, then, that you inspected the butter on the first ships?

A. Well, as I stated before, the former truck driver of Nye & Nissen told us that it was the policy of the company to put 50 one-pound prints in a box and bill it for 60, and we checked it merely to see whether or not there were the proper number of prints in the box. We also received a complaint along that line from the port steward of the General Steamship Company.

Q. Who was this truck driver?

A. Joe Bartfeld.

Q. You said that the butter was short-weighed on the James King, I believe? A. Yes.

Q. Which had been delivered a long time previous to May of 1944?

A. Yes, that is correct.

Mr. Faulkner: Your Honor, that is his opinion and conclusion—months before.

Mr. Houck: At least it was before.

A. Yes, it was in about January of 1944 is when——

Mr. Faulkner: Just a moment, your Honor. If this record attempts to have this witness say that he examined someting in May of 1944 of a delivery in January of 1944, and a claim made that there

(Testimony of Dallas A. Johnson.)

was some shortage, we submit there is no foundation for that testimony in this record.

Mr. Houck: I am perfectly willing to reframe the question. [2840]

Mr. Houck: Q. You stated the butter was short on the James King.

Mr. Faulkner: We object to that.

Mr. Houck: On your cross-examination you asked him that question.

Mr. Faulkner: You mean short at the time of delivery or at the time he saw it?

Mr. Houck: When he went on board and inspected it.

Mr. Faulkner: No objection to that.

Mr. Houck: Q. Is that correct?

A. Yes. I went on board the James King and found there was a quantity of butter left on board that had been delivered in January by Nye & Nissen, and that all the boxes contained 50 1-pound prints rather than 60, as they were billed.

Q. On that ship you did not weigh the individual prints? A. No, I did not weigh them.

Q. Were any markings on the cases of the butter on the James King?

A. I don't recall without having some refreshment of some kind from my notes.

Q. Did the cases contain any marking indicating any number of one-pound prints in them, do you recall?

A. No, I don't think the cases did.

Q. These records you looked at at the Nye &

(Testimony of Dallas A. Johnson.)

Nissen plant that were furnished to you, how did the purchases of cheese compare with the sales of cheese for the period of time you [2841] inquired about?

A. During the period I inquired about the City Sales Division's sales of cheese reflected that they sold more cheese than they purchased.

Q. Was that taking into account the inventory on hand of cheese?

A. Yes, that was taking into account the inventory.

Q. You stated you were there at the Nye & Nissen plant about two and a half weeks.

A. Approximately two and a half weeks.

Q. Why did you stop going to that plant?

A. The first reason I stopped was because I became ill, I caught the 'flu', and when I went back Mr. Eichler told me that they would need the premises where I was working for other purposes beginning the first of the month, and that I could no longer work there from that time on.

Q. When was this conversation with Mr. Eichler?

A. I believe it was around the last of November.

Q. Was anyone else present besides yourself and Mr. Eichler? A. Not that I recall.

Q. Did you respond to Mr. Eichler?

A. Well, I told him that I would—of course, we were making an investigation at the request of the War Frauds Attorney, and I would convey

(Testimony of Dallas A. Johnson.)

that information to the War Frauds Attorney, and I did that.

Q. Did you on subsequent occasions, attempt to get records from the firm, or any of its representatives?

A. Well, the War Frauds Attorney endeavored to have the records made [2842] available to us after that time. However, there was no result on that.

Mr. Houck: That is all.

Recross-Examination

Mr. Faulkner: Q. Mr. Johnson, you just referred at the outset of your redirect examination to the fact that reels of cheddar cheese—you said something about 30 pounds. Is that what a case is, three reels in a case that you are referring to?

A. You mean by a reel—I call them wheels.

Q. Wheels. Well, either one. They come packed three in a case?

A. Sometimes they come three, sometimes they come one, sometimes they come two.

Q. Did you ever on any ship see any invoice that purported to charge for wheels of cheese at 30 pounds? Tell me the name of one?

A. If I could see my notes I will see if I have a notation made.

Q. I will withdraw the question so I can finish with the witness by twelve o'clock.

Don't you know, as a matter of fact, Mr. Johnson, that those wheels of cheese come in boxes and

(Testimony of Dallas A. Johnson.)

that the box when there are three wheels of cheese average in weight from about 73 pounds to 78 pounds, and that it would be unusual to see a single box with a mark higher than 80 pounds or 85 pounds?

A. These boxes did not have any weight marking on them at all.

Q. You testify that the firm of Nye & Nissen were selling [2843] wheels of cheese to the ships on the waterfront, indicating that each wheel weighed 30 pounds.

A. I said the invoice indicated that.

Mr. Faulkner: I guess we better have the notes, then. Show me an invoice indicating that a wheel of cheese weighed 30 pounds, Cheddar cheese. I will help you, Mr. Johnson, on that. Is the only sale of Cheddar cheese of the type you referred to in your redirect examination—No, I withdraw that. It was the John Muir, was it? You weren't on the John Muir, were you, Mr. Johnson?

A. I beg your pardon?

Q. Were you on the John Muir?

A. I don't think I went on board that vessel.

Q. I interrupted you. I though I would hasten your examination, but I retarded it.

A. I don't——

Q. You have nothing in your notes that verifies your statement that the firm of Nye & Nissen sold any Cheddar cheese in wheels at the rate of 30 pounds to the wheel have you?

(Testimony of Dallas A. Johnson.)

A. Not on the ships that I testified to here. The other ships that I have gone on, though.

Q. Mr. Johnson, name any ship, any ship at all which you ever went on, where cheese was charged at the rate of 30 pounds to the wheel.

A. I can't recall the name of any particular ship right now.

Q. The average weights of those Cheddars of cheese, three in a box, sold to all of these *copies* that you sat here day after [2844] day and heard the invoices read, was around 80 pounds a box, wasn't it? You heard them read here day after day, Cheddar cheese, two cases, 160 pounds?

A. Yes, but it didn't weigh 80 pounds to the box.

Q. Pardon me? You heard the testimony of various people identifying invoices for Cheddar cheese in figures averaging around 80 pounds to the box, didn't you, from the time this case started—isn't that right, right in this courtroom?

A. I didn't pay any particular attention to——

Q. All right.

A. (Continuing): To the figures given by these, in the testimony of these people who testified as to the quantities from the invoices.

Q. All right. You testified again on your redirect examination that you reached a conclusion from examining the records of the firm of Nye & Nissen that they sold more cheese than they had in their plant; is that right?

A. No; I did not say that. I said the City

(Testimony of Dallas A. Johnson.)

Sales Division sold more cheese that it had apparently purchased or obtained.

Q. City Sales Division? A. Yes.

Q. Sold more than it purchased or obtained?

A. Yes, that is true.

Q. But you found that the method of the conduct of that business was that the City Sales Division was merely one phase of an outlet, and the articles that went out on Nye & Nissen, Inc. invoices were all leaving the same plant, and that the cheese came from the same source; you knew that?

A. Yes, but we were not [2845] able to trace the Nye & Nissen sales because we did not have the purchases; we did not have the Nye & Nissen merchandise to check against the outgoing.

Q. When you were out there at the firm of Nye & Nissen—may I have one of the exhibit records for illustration—every sales tag of that company was in their file, wasn't it?

A. You mean every invoice?

Q. Every invoice like a ship delivery tag that went to the waterfront was taken out for your investigation?

A. I can't state that. I will say the invoices in there were in numerical sequence without any of the numbers being missing. However, they may have made sales that they did not make any record of, for all I know.

Q. At all events, give an idea of the size of the monthly quantities of invoices that you had to go

(Testimony of Dallas A. Johnson.)

through to determine the sales, the invoices, how high was the binder showing the sales?

A. They did not keep them in a binder.

Q. What quantity, the size for a month?

A. Well, I will say that there were several boxes about two feet long containing invoices but I can't state how many there were during the period from January to May, 1944.

Q. It would average about 30000 separate individual transactions a month, wouldn't it; those invoices that were turned over to you for inspection?

A. I would not state that many. Practically all of those invoices, however, were sales other than [2846] cheese and other than to the Government.

Q. What paper did you have before you when you reached that conclusion, that the City Sales Division of Nye & Nissen had sold more cheese than it had purchased?

A. I had before me the inventory records of the City Sales Division put out periodically; I had before me the sales record by Nye & Nissen, Inc. to City Sales, and I had sales where the inventory of Nye & Nissen—I mean of City Sales showed deliveries of cheese, and I had also the purchases by City Sales of cheese and outside purchases.

Q. The purchases from City Sales by Nye & Nissen, isn't that right?

A. I beg your pardon?

Q. That Nye & Nissen City Sales is not anything except as a bookkeeping transaction of the firm of Nye & Nissen?

(Testimony of Dallas A. Johnson.)

A. I don't know whether it was the City Sales that bought, but I was given to understand that by Mr. Eichler.

The Court: It is now twelve o'clock. We will recess until two o'clock.

(A recess was thereupon taken until two o'clock p.m.) [2847]

Afternoon Session, March 14, 1946, 2:00 p.m.

The Court: You may proceed.

DALLAS A. JOHNSON,

recalled;

Recross-Examination (resumed)

Mr. Faulkner: Q. Mr. Johnson, when you were at the firm of Nye & Nissen what record did you examine at the time that you reached a conclusion that there was more cheese sold than purchased? What record did you see?

A. I saw all of the invoices of the City Sales Division, I saw all of the invoices of Nye & Nissen, Inc. up to about the middle of May, perhaps the last of May, and I saw the purchases of, I say, of City Sales, that is what Mr. Eichler told me, that they were by City Sales, and I saw the inventory records at the end of the periods of City Sales.

Q. What period? The end of it was the middle of May, what was the commencing period?

(Testimony of Dallas A. Johnson.)

A. 1st of January.

Q. January 1st? A. Yes.

Q. You saw inventories?

A. Of City Sales.

Q. Of City Sales. Did you see inventories of Nye & Nissen? A. I don't believe I did.

Q. Did you see purchases of City Sales?

A. I did not see all purchases of City Sales.

Q. Did you see any purchases of City Sales?

A. Yes, I saw [2848] some that Mr. Eichler said were of City Sales.

Q. This morning you testified that you asked for records concerning purchases of materials and Mr. Eichler declined to give them to you.

A. I said of Nye & Nissen.

Q. In other words——

A. I am segregating the two as being separate parts of the business.

Q. Then the situation was he gave you purchase records of Nye & Nissen's City Sales, but declined to give you purchase records of Nye & Nissen, Inc., is that correct?

A. I wouldn't state that definitely; I mean in those words. My records were some records which he stated were the purchases by City Sales of cheese. However, I remember that we did not get anything, however, showing how much cheese that Nye & Nissen, Inc., purchased.

Q. Did you ask for them? A. Yes, sir.

Q. He didn't give them to you?

A. He either declined or told me they were not

(Testimony of Dallas A. Johnsen.)

available, I forget what he said. At least, I did not get them.

Q. So that at the time you were out there there is no question in your mind that you made a request of Mr. Eichler that he get some record showing the quantities of cheese that had been purchased by the firm of Nye & Nissen, and that he did not give them to you, and declined to give them to you?

A. I asked him for all the records concerning the purchases and sales of cheese, and I obtained the records that I have mentioned; [2849] the company may have other records that I don't know about, and that I could not ask for specifically by name, because I didn't know what they call them.

Q. Isn't it a fact that when you were talking about records with Mr. Eichler that he explained to you that he had a record and he tendered the record to you showing the sales, the purchases and the quantities of cheese during particular intervals?

A. He showed me a ledger sheet, if I remember correctly, showing the quotas; that is, the ledger sheet did not name the type, that is what we were interested in, the type, not the totals.

Q. Didn't he further tell you that there was an invoice, many, many invoices there that showed the amounts of cheese of particular descriptions, and that if you needed it you could have it, but that the record of the purchases was in the ledger sheet?

A. He explained to us the ledger sheets were made up from the sales invoices as a rule, and we

(Testimony of Dallas A. Johnson.)

did not question that. We did not try to draw off a balance to ascertain whether that was true. We assumed that to be the truth. Then we asked to inspect the invoices which he stated were the original records.

Q. What?

A. Which he stated were the original records.

Q. You asked him for that?

A. Yes. That is, we looked at the sales invoices of City Sales.

Q. I mean all of the sales invoices of both those companies were available to you from the time you entered the door until [2850] the time you left, weren't they?

A. Yes, but you can't make an analysis of anything from just the sales invoices alone.

Q. I am not asking about an analysis. I am asking for a simple question. All the sales invoices of that corporation, whether it was Nye & Nissen, Inc., as shown on some of the invoices, or City Sales, were they available to you for your inspection from the day you walked into the premises until you left?

A. I can't state that definitely, because I don't know at this time whether all the invoices or not were there. There may have been others that we didn't see.

Q. There was a great quantity of them, however, that was available?

A. Yes, there were several thousand.

Q. On the other hand, there were invoices in

(Testimony of Dallas A. Johnson.)

which the firm, the corporation Nye & Nissen, was the purchaser of various quantities of merchandise; is that right?

A. Invoices? Sales records from a purchase record.

Q. Were there invoices showing purchases in the records of Nye & Nissen?

A. There were invoices in the records of Nye & Nissen showing purchases by City Sales.

Q. Yes. There were in the records of Nye & Nissen records, either bills or the equivalent of that, indicating cheese purchases by the corporation, weren't there?

A. Not in the invoices. The invoices were made of sales.

Q. Mr. Johnson, the record of sales was in sheets that had numbers, and they were numbered in sequence, and you checked [2851] the numbers and found they were in sequence. I am not an accountant, and I may be misnaming that. There is a corresponding record—was there a corresponding record showing the invoice that the vendor to Nye & Nissen had issued, or a bill or some equivalent document showing merchandise that came into that firm?

A. I saw some purchase records that Mr. Eichler told me were of City Sales.

Q. Were there some purchase records for Nye & Nissen?

A. Yes, we saw them. However, these purchase records, as I recall, were bound with fasten-

(Testimony of Dallas A. Johnson.)

ers or something like that, and they were very small in number as compared with the invoices of sales. Now, I call an invoice, when I am examining, for instance, the records of a company, an invoice is a sales record, and a purchase or a billing by somebody else to them I call a record of purchase.

Q. Purchase record. A. Yes.

Q. The only purchase records that you saw were purchase records of City Sales, is that right?

A. I don't know what I saw. Mr. Eichler told me they were the City Sales purchase records.

Q. Didn't Mr. Eichler explain in detail to you how they purchased cheese; didn't he explain that to you?

A. He explained but I wouldn't say he explained in detail. He explained generally.

Q. Are you a lawyer or an accountant, Mr. Johnson? A. I am an accountant. [2852]

Q. As an accountant, when you were out there you knew what records to seek in order to determine every question relating to accountancy, isn't that right?

A. I knew generally what records to seek. However, you never know exactly what to ask for when you go into a place. You can ask for all the records of purchases of merchandise and you assume you get all the records of purchases of merchandise. However, I wouldn't specify particular records by the particular names. I might call some records that I wanted out there differently——

(Testimony of Dallas A. Johnson.)

Q. You knew that when you went in there, didn't you? A. What?

Q. You knew that when your went in there. Everything you said now you knew when you went in there, and you would know whether or not you had a greater familiarity with the business, the records to call for?

A. I would know generally what records to call for.

Q. Yes, and you were quite capable of expressing any thought that you had as to the records you wanted to cover there?

A. I was capable to express generally what I wanted, yes.

Q. Did you make a request of Mr. Eichler to have these purchases, billing records, presented to you, or indicated to you of cheese?

A. For City Sales?

Q. And you got them?

A. I assume that that is what I got.

Q. Did you make a request for a similar record for Nye & Nissen?

A. I don't recall having made a similar request for Nye &[2853] Nissen. I recall having made a request for a record on Nye & Nissen which would indicate the amount of cheese and the type of cheese that they purchased from their Western Refrigerating Company, where they obtained their Cheddar cheese, and I did not get any record like that.

Q. You did not?

(Testimony of Dallas A. Johnson.)

A. No, I did not get any record like that.

Q. Did Mr. Eichler refuse to give it to you?

A. I don't know whether he refused to or declined. I don't know whether he didn't have it or whether he refused, but I know I did not get it.

Q. Tell me what you said to him and what he said to you.

A. I can't recall the exact words.

Q. At all events, you left without seeing those records, is that right? A. That is true.

Q. How many pounds of cheese did you find that City Sales' records showed had been purchased in the period from January 1, 1944, up to May 15, 1944?

A. I don't have the exact figures. It would be several thousand pounds.

Q. How many pounds of cheese did you find in that examination of sales slips of Nye & Nissen's City Sales had sold during that period?

A. Well, it would be several thousand that was sold. It would be—— Well, yes. The different parts of the periods varied. Some months they would sell perhaps 400 or 500 pounds more than they would buy. Other periods maybe they would only sell 400 pounds more than they bought. [2854]

Q. Weren't there periods where the records showed that they bought more than they sold?

A. Yes. There was one period after the 13th or 12th of May which reflected that they purchased a great quantity of cheese, but there was no indication that they had sold any of this cheese. How-

(Testimony of Dallas A. Johnson.)

ever, the inventory at the end of that period showed no appreciable amount of cheese on hand, so, therefore, the books did not balance. As a matter of fact, the books, the records all through this period were entirely out of balance. I mean you could not make an accurate determination as to just exactly how much more cheese they sold than they purchased, because in some instances it appeared the invoices were missing or their sales records were missing.

Q. Likewise, you were unable to determine whether they had sold less than they had purchased, weren't you?

A. No, because the invoices spoke for themselves in that record. If the invoices showed that they had purchased certain cheese and the invoices, the City Sales showed they had sold certain cheese and I balanced one against the other.

Q. During the period from January to May the records showed inventory and sales month by month, is that right?

A. Well, they showed inventory month by month and sales day by day, or transaction by transaction.

Q. And the records also showed the quantity coming in day by day, didn't they?

A. No, not the records that I saw. [2855] There may be some records out there that show that.

Q. Didn't you make a record of these various things that you saw and observed out there?

A. I made certain records, yes.

(Testimony of Dallas A. Johnson.)

Q. Have you got them with you there in the chair?

A. I have some of the records I made.

Q. May I see it, what you have? What is that supposed to be?

A. This is a schedule called "Total sale of California Loaf Cheese by City Sales Division, Nye & Nissen, from January through May, 1944."

Mr. Faulkner: I will ask that this be marked for identification.

(The document was marked Defendants' Exhibit CA for Identification.)

Mr. Faulkner: That is all.

The Court: Is that all from this witness?

Mr. Houck: No. I have just a few questions.

The Court: Proceed.

Further Redirect Examination

Mr. Houck: Mr. Faulkner, just before lunch, Mr. Johnson, asked you to try to recall a ship on which you found Nye & Nissen had billed the Government 30 pounds for a wheel of Cheddar cheese. Have you examined your notes that you made on board any of these vessels to determine whether there was such a shipment? A. Yes, I have.

Q. What notes did you examine?

A. The notes I examined were [2856] the notes I made when I went aboard the SS Sacajawea.

Q. Do you have them with you?

A. Yes, sir.

Q. Referring to those notes, can you testify what